IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.3807 of 2004
Date of Decision:- 21.12.2006

Punjab Mandi Board & ors. ....Petitioner(s)
through
Ms.Neelam Gupta, Advocate.

vs.

Ajaib Singh & ors. ....Respondent(s)
through
Mr.Gur Rattan Pal Singh, Advocate

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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SURYA KANT, J.

This order shall dispose of C.R.Nos.3807, 3808, 3809 and 3810 of 2004 as the common questions of law and facts are involved therein. For the sake of brevity, the facts are being taken from C.R. No.3807 of 2004.

This revision petition is directed against the order dated 28.1.2004 passed by the First Appellate Court whereby application under Order 39 Rules 1 and 2 read with Section 151 CPC moved by the respondent-plaintiffs has been allowed and the petitioner-Board has been restrained from effecting recoveries from them.

The facts may be briefly noticed. The respondent-plaintiffs are employees of the Market Committee and are working on different posts. A complaint dated 4.7.1989 was received from one of the Mandi Supervisors alleging that the respondent-plaintiffs have caused some loss to the Market Committee, Mansa by making entries of less quantity of mustard, which was brought from the grain market after an auction. On the basis of the said complaint, preliminary enquiry was conducted which led to issuance of charge sheets dated 1.10.1990. The respondent-plaintiffs filed their respective replies, followed by a regular enquiry. It appears that the said

enquiry resulted into passing of some recovery orders against the respondent-plaintiffs which prompted them to file the present suit. They also moved an application under Order 39 Rules 1 and 2 CPC to restrain the Market Committee/Board Authorities from effecting recoveries from them till the decision of the suit. The learned Trial Court, however, dismissed their application. The respondent-plaintiffs thereafter filed an appeal which has since been allowed by the learned Additional District Judge, Mansa vide the impugned order dated 28.1.2004.

Aggrieved, the Punjab Mandi Board and the Market Committee, Mansa have approached this Court.

I have heard learned counsel for the parties and perused the impugned order.

Undoubtedly, the issue as to whether or not the departmental proceedings have been held against the respondent-plaintiffs in accordance with rules and principles of natural justice, will be gone into by the learned trial Court upon consideration of the evidence to be led by both the parties. It is not desirable or expedient to express any opinion at this stage in relation thereto.

However, existence of three basic ingredients, namely, *prima facie* case, balance of convenience and irreparable loss and injury, was required to be taken into consideration by the Courts below while considering the prayer for ad-interim injunction. Normally, in a case where recovery is to be effected after some domestic enquiry, it cannot be said that the recovery, if not stayed, would cause an irreparable loss or injury. Needless to say, if the employee succeeds in the suit, the Board/Market Committee could be directed to compensate him in monetary

terms for the amount recovered from him. In the impugned order dated 28.1.2004, learned First Appellate Court appears to have overlooked the fact that the respondent-plaintiffs have failed to establish one of the requisite ingredients, namely, irreparable loss or injury to them.

However, at this stage, it cannot be ignored that the injunction was granted by the First Appellate Court way back on 28.1.2004 and by now it is quite possible that the proceedings in the civit suit are near to completion.

Consequently, having regard to the facts and circumstances of this case, this revision petition is disposed of with a direction that the respondent-plaintiffs shall give an undertaking in writing before the learned Trial Court within one month from today to the effect that in case their challenge before the Civil Court fails, the petitioners (Board and the Market Committee) shall be entitled to recover the amount in dispute along with interest at the rate of 9% per annum.

If the above-stated undertaking is furnished by the respondent-plaintiffs, the interim injunction granted in their favour by the First Appellate Court vide order dated 28.1.2004 shall be allowed to operate. However, if they or anyone of them fails to furnish the required undertaking, the impugned order dated 28.1.2004 qua them/him shall be deemed to have been set aside thereby leaving it open for the petitioners to effect the recoveries in accordance with law.

December 21, 2006 **(SURYA KANT)**
poonam **JUDGE**